



ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Intent to Request Public Comment on Draft
Exemption from Historic Preservation Review for Electric
Vehicle Supply Equipment

AGENCY: Advisory Council on Historic Preservation.

ACTION: Request for Public Comment on Draft Exemption from
Historic Preservation Review for Electric Vehicle Supply
Equipment.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) proposes an exemption that would relieve Federal agencies from the requirement of taking into account the effects of their undertakings on historic properties that involve the installation of certain electric vehicle supply equipment (EVSE). The proposed exemption would allow all Federal agencies to forego the historic preservation review process required for Federal undertakings and more quickly implement EVSE infrastructure for the Federal fleet. The public is invited to comment on the draft exemption before it is finalized and submitted for review and potential adoption by the ACHP.

DATES: Submit comments on or before June 4, 2022.

ADDRESSES: Address all comments concerning this exemption to Jaime Loichinger, Assistant Director, Advisory Council on Historic Preservation, at program_alternatives@achp.gov.

FOR FURTHER INFORMATION CONTACT: Jaime Loichinger, (202) 517-0219, jloichinger@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108 (Section 106 and NHPA), requires Federal agencies to consider the effects of their undertakings on historic properties, and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. Historic properties are those properties that are listed in the National Register of Historic Places (National Register) or eligible for such listing.

The NHPA authorizes the ACHP to promulgate regulations for exempting undertakings from any or all of the requirements of Section 106 (54 U.S.C. 304108(c)). The Section 106 regulations, found at 36 CFR Part 800, detail the process for the approval of such exemptions (36 CFR 800.14(c)).

In accordance with section 800.14(c), the ACHP may approve an exemption for an undertaking if it finds that:

(i) the actions within the program or category would otherwise qualify as "undertakings" as defined in 36 CFR 800.16; (ii) the potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and (iii) exemption of the program or category is consistent with the purposes of the NHPA.

I. Background

In 2021, three Executive Orders were issued regarding Federal vehicle, or fleet, electrification: 1) E.O. 14005, Ensuring the Future is Made in All of America by All of America's Workers, commits the Federal government to upgrade the entire Federal fleet to electric vehicles (EVs); 2) E.O. 14008, Tackling the Climate Crisis at Home and Abroad, prioritizes the development of a Federal Clean Electricity and Vehicle Procurement Strategy and directs Federal agencies to upgrade the entire Federal fleet to EVs; and 3) E.O. 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, sets a goal of 100 percent zero emission vehicle Federal acquisitions by 2035, including 100 percent light duty vehicle Federal acquisitions by 2027. Additionally, the Infrastructure Investment and Jobs Act (IIJA) of 2021 (Pub. L. 117-58, 135 Stat. 429) appropriates \$550 billion for new infrastructure investments. The IIJA includes provisions to increase investment in electric vehicle supply equipment (EVSE),

alternative fuel infrastructure, EV batteries, electricity grid upgrades, and light-, medium-, and heavy-duty zero emission vehicles.

Due to these requirements, Federal agencies are anticipated to propose activities to carry out, license, approve, or fund undertakings to electrify Federal vehicles and provide electric vehicle supply equipment (EVSE) that have the potential to affect historic properties and therefore, require Section 106 review.

An EV produces zero tailpipe emissions, dramatically lowering smog and greenhouse gas emissions even when considering electricity generation (EV refers to both Battery Electric Vehicles and Plug-in Hybrid Electric Vehicles). EVs have the potential to significantly improve Federal fleet efficiency and reduce vehicle operation and maintenance costs. EVs require EVSE. Commonly referred to as charging stations, EVSE is the hardware of the charging infrastructure that transfers energy to a vehicle. EVSE can be wall- or pole-mounted, co-located or stand alone, and vary in design, size, charging speed and energy use.

II. Exemption Concept and Criteria

In considering how to address the anticipated increase in undertakings as a result of these requirements, the Department of Homeland Security (DHS) assembled an ad hoc working group of Federal Preservation Officers (FPOs) to discuss EV priorities and the potential effects of the EVSE

program on historic properties. Through consultation with fleet technical experts, the working group defined the undertakings to be addressed by the proposed exemption as the installation, maintenance, repair, and expansion of Levels 1, 2, and 3 EVSE as defined by the General Services Administration. DHS approached the ACHP with the concept of the proposed exemption, at which time the ACHP determined it would avail itself of the regulatory process to propose the exempted category itself. The government-wide priority for fleet electrification and EVSE installation merited ACHP coordination of the proposal to ensure broad and appropriate consultation for an exemption likely to be applied across multiple Federal agency programs.

The EVSE undertakings would require minimal changes to distinctive building materials, features, spaces, and spatial relationships, including landscapes and streetscapes. With few exceptions, these undertakings include co-location with existing electrical infrastructure; utilization of existing parking areas and structures; are incorporated within public transportation rights-of-way designs that would be compatible with the architecture, scale, and design of the facility or surrounding environments; and use reversible, non-permanent techniques to affix infrastructure. To ensure minimal and non-adverse effects, the undertakings must utilize the

lowest profile equipment that can supply the charging capacity needed for the location, be placed in a location that would minimize visual intrusions, and/or the utility boxes would utilize complementary colors to ensure minimal effects, for the exemption to apply. EVSE installation would be undertaken in such a manner that, if removed in the future, the character-defining form and integrity of an historic property and its environment would be unimpaired. Due to the types of undertakings proposed and the conditions to be imposed on the undertakings, the potential effects would likely be minimal or not adverse to historic properties.

Consistent with 36 CFR 800.14(c)(1), Section 106 exemptions must meet certain criteria. The ACHP believes that the proposed exemption, which appears below, meets these criteria. The exemption aligns with the NHPA because it reflects an effort to harmonize modernization and climate change reduction measures with continued use of historic properties. As described above and in the exemption text, the EVSE will be restricted to existing footprints, and would use reversible, non-permanent techniques for installation, where appropriate. As such, the effects of the proposed undertakings are foreseeable and would be minimal or not adverse.

III. Public Participation and Consultation

In accordance with 36 CFR 800.14(c) (2), public participation regarding exemptions must be arranged on a level appropriate to the subject and scope of the exemption. This notice is intended to meet the requirement for public participation in the development of this exemption. Additionally, the ACHP created a dedicated web page for the proposed exemption and will conduct social media outreach. In developing this proposed exemption, the ACHP is also consulting directly with State Historic Preservation Officers, Indian Tribes, Tribal Historic Preservation Officers, and Native Hawaiian organizations.

IV. Text of Exemption

The full text of the proposed exemption is reproduced below:

Exemption Regarding Historic Preservation Review Process for Undertakings Involving Electric Vehicle Supply Equipment

I. Exemption from Section 106 Requirements

Except as noted in Section II, all Federal agencies are exempt from the Section 106 requirement of taking into account the effects of undertakings they propose to carry out, license, approve, or fund activities to install, maintain, repair, or expand EVSE and Level 1, 2, or 3 charging stations, provided those undertakings take place in existing parking areas and structures and use reversible, non-permanent techniques to affix the

infrastructure. Agencies must utilize the lowest profile equipment, place the EVSE in a minimally visibly intrusive area, and use complementary colors, where possible.

Each Federal agency remains responsible for considering the effects of its undertakings on historic properties that are not subject to this exemption, in accordance with subpart B of the Section 106 regulations or according to an applicable program alternative executed pursuant to 36 CFR 800.14.

II. Undertakings Excluded from Exemption

Undertakings that have the potential to affect historic properties of religious and cultural significance to Indian tribes or Native Hawaiian Organizations shall require individual Section 106 review.

III. Application on Tribal Lands

This exemption shall not apply to undertakings proposed to occur on or affect historic properties located on tribal lands unless the Tribe has provided prior written notification to the ACHP that it agrees with the use of the exemption on its tribal lands. Indian Tribes can agree to such use of the exemption by completing the attached form (Attachment A), with the signature of the relevant Tribal Historic Preservation Officer, Indian tribe, or a designated representative of the tribe, and submitting the completed form to the ACHP. The exemption would then be

applicable to undertakings proposed to occur on or affect historic properties located on those tribal lands when the ACHP provides notice on its WEBSITE of such agreement.

IV. Existing Agreements

This exemption is not intended to amend, invalidate, or otherwise modify Section 106 agreements in existence at the time this exemption goes into effect.

V. Potential for Termination

The ACHP may terminate this exemption in accordance with 36 CFR 800.14(c)(7) if it determines that the purposes of Section 106 are not adequately met.

VI. Definitions

The following definitions shall apply to this exemption:

- a. "Section 106" means Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and its implementing regulations at 36 CFR Part 800.
- b. "Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.
- c. "Electric Vehicle Supply Equipment" (EVSE) means

conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of delivering energy from the premises wiring to the EV. There are three levels of EVSE:

- i. Level 1 - Refers to a freestanding or wall mounted charging structure that delivers a 110/120V charge, replenishing an EV battery at a rate of 4 to 6 miles of range per hour of charging time. Charging an EV at level 1 typically takes between 7 and 20 hours depending on the size of the vehicle's battery.
- ii. Level 2 - Refers to a freestanding or wall mounted charging structure that delivers a 208/240V charge, replenishing an EV battery at a rate of 10 to 20 miles of range per hour of charging time. Charging an EV at level 2 typically takes between 2 and 5 hours depending on the size of the vehicle's battery.
- iii. Level 3 (also known as Direct Current (DC) Fast Charging) - Usually a freestanding or wall mounted structure capable of being networked that is designed to charge vehicles more quickly than level I or level II with an electrical output

ranging between 40 kW - 120 kW delivering a charge from 480V or 208V. Converts AC power to DC within the charging station and deliver DC power directly to the battery. DC fast charging can typically replenish an EV battery at a rate of 50 to 90 miles of range per 30 minutes of charging time.

d. "Tribal lands" means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

ATTACHMENT A to the Exemption from Historic Preservation Review for Electric Vehicle Supply Equipment

The [INSERT NAME OF INDIAN TRIBE] agrees that federal agencies can utilize the attached Exemption from Historic Preservation Review for Electric Vehicle Supply Equipment on its Tribal Lands.

Signed by:

_____ (Signature of Tribal Historic Preservation Officer, Indian tribe, or a designated representative of the tribe)

_____ (Printed Name and Title)

_____ (DATE)

The [INSERT NAME OF INDIAN TRIBE] may discontinue this authorization at any time by providing written notice to the Advisory Council on Historic Preservation.

For further information, please contact: _____

(Tribal Contact; Name and Contact Information)

(END OF DOCUMENT)

Authority: 36 CFR 800.14(c)

Dated: April 29, 2022.

Reid J. Nelson,

Executive Director, Acting.

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